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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,717	02/01/2001	Fred DePoalo	5305	7007

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EXAMINER

DINH, TAN X

ART UNIT

PAPER NUMBER

2653

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,717

Applicant(s)

DEPOALO, FRED

Examiner

TAN X DINH

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1) Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "capable of" (claim 1, line 13) renders the claim(s) indefinite. The phrase "capable of" refers to the potential of the device to function in a prescribed manner. That the device merely could function in a certain manner leaves in doubt whether the claim(s) actually encompasses such a function.

Claim(s) 2-5 incorporate the indefiniteness of claim(s) 1 by virtue of their dependency thereon.

2) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3) Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over NISHIWAKI (JP, 61-80,659).

NISHIWAKI discloses a tandem CD player for selectively playing a track from two different CDs as claimed in claim 1,

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comprising a control unit (Fig.2, 201), a control panel (Fig.1, control panel), a first CD player and a second CD player (Fig.1, CD player A and CD player B. See the Abstract for continuous play from desk A to desk B without interruption), *except* to specifically show a fader for setting a fading period. Official Notice is taken that fader for setting fading period in any audio player (CD player, cassette tape player, digital tape player, etc.,) are widely used in the art and therefore they are old and well known. It would have been obvious to use the old and well known fader in CD player such as NISHIWAKI's because, in the absence of any new or unexpected result, selecting of a known material/elements/devices based on their suitability for the intended use is deemed obvious. In re LESHIN, 125 USPQ 416.

As to claim 2, NISHIWAKI show the transfer button for transferring the sound output between first and second CD players in figure 1, 128 and 129 (in this case, after press the buttons 128 and 129, the audio signal output from CD desk A and B will be transferred to speakers 218L and 218R in figure 2).

As to claim 3, it would have been obvious to use a remote control in dual CD player of NISHIWAKI since the technique of using remote control in CD player for remote controlling the operation of CD player are old and widely used in the art.

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As to claim 4, NISHIWAKI shows a CD drawer (Fig.1, Desk A and Desk B), rewind button (Fig.1, 132), fast forward button (Fig.1, 131) and open/close button (Fig.1, 133 and 134).

As to claim 5, NISHIWAKI shows a mixer for receiving the sound from first and second CD player (Fig.2, 226. It is noted that, the error correction 226 is function as a mixer, connects to controller 201, for receiving audio signal output from both CD players A, B and outputting the audio signal received from CD players A and B to speakers 218L and 218R).

4) The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objection made. Applicant must also show how the amendments avoid such references and objections. See 37 CFR §1.111(c).

TABUCHI et al (5,311,492 and 6,529,452), YOSHIO et al (5,446,714), TANAKA (5,751,678), MATSUMOTO (5,862,104), HISAMATSU et al (5,889,747), VIDAL et al (6,215,754), KONDO (6,388,959), KUMAGAI (6,512,722), TAKENAKA (6,560,174) and NAKANISHI et al (4,722,078) discloses a dual CD player capable of playing between first or second CD desks.

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6) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to TAN DINH whose telephone number is (703)308-4859. The examiner can normally be reached on Monday - Friday from 8:00AM to 5:30PM.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-4700, or the Customer Service whose telephone number is (703)306-0377.



TAN DINH
PRIMARY EXAMINER

July 25, 2003